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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,669

09/21/2005

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EXAMINER

GILBERT, SAMUEL G

ART UNIT

PAPER NUMBER

3735

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/530,669	<b>Applicant(s)</b> RASTATTER ET AL.	
	<b>Examiner</b> Samuel G. Gilbert	<b>Art Unit</b> 3735	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-67 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>five</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 4 and 45-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 - the use of acronyms in the claim renders the claim indefinite, "FAF" should be replaced.

Claim 4 - the use of acronyms in the claim renders the claim indefinite, "BTE, ITE, ITC and CIC" should be replaced.

Claims 45-48 - the claims recite "means for" however the specification does not set forth what each means comprise making the scope of the claims indefinite. Further, in paragraph [0108] the applicant sets forth that undescribed additional structure are covered by the means language. For purposes of examination on the merits the Examiner is considering the claims not to evoke 112 6<sup>th</sup> paragraph.

Claims - 49-52 acronyms should be replaced.

Acronyms should be replaced wherever they occur in the claims.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 45-48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not set forth specifically what the applicant considers the different "means" set forth for each recited "means" in the claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 12, 14, 16, 17, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Kehoe (5,794,203).

Claim 1 - Kehoe teaches administering frequency altered auditory feedback to a subject having a non-stuttering pathology while the subject is speaking or talking.

Applicant's attention is invited to column 4 lines 10-38. The device and method of

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Kehoe is set forth for uses with patients having speech disorders, column 4 line 11 and sets forth one example of stuttering. It is the examiner's position the example of stuttering is non-limiting and the method and apparatus are used for all speech disorders. A non-limiting list of known speech disorders include stuttering, cluttering, dysprosody, speech sound disorders, voice disorders, dysarthria and apraxia.

Claim 2 - the auditory signal is received and processed as claimed see column 4 lines 54-59.

Claim 3 - the microphone may be attached to a small earphone as set forth in column 7 lines 64 and 65. When the microphone and the earphone are connected there is no need for external cabling.

Claim 5 - speech disorders include speech sound disorders include disorders characterized by difficulty learning to physically produce sounds.

Claim 12 - speech disorders include dysarthria may be caused by Parkinsons disease.

Claim 14 - speech disorders include dysarthria may be caused by trauma.

Claim 16 - speech disorders include dysarthria.

Claim 17 - programming frequency shift is set forth in column 12 lines 11-38.

Claim 45 - the examiner is considering the device of Kehoe to be a functional equivalent for the device as claimed because they perform the same function.

Claim 46 - the microphone is a means for receiving, and the headphones are means for administering. The means for converting, altering and converting are set forth a part of U13 the FAF computer and described in column 9 lines 21-30.

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Claims 1, 2, 5, 6, 44, 47, 48 and 59 rejected under 35 U.S.C. 102(e) as being anticipated by Oster (6,644,973).

Oster teaches an over the ear device, column 5 line 6, by applying frequency altered feedback to the user. The frequency is altered by filtering the users voice. The method is used to improve reading speed and comprehension.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 7-11, 13, 15, 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kehoe (5,794,203) as applied to the claims above.

Claims 18-23 - the method used by Kehoe does not specify the age of the subject. It is the examiner's position that the method may be used with any aged subject. It would have been obvious to use the method taught by Kehoe with any aged subject because persons of any age may be diagnosed with the maladies treated by Kehoe.

Claims 5, 7-11, 13 and 15 - while Kehoe does not treat treating the claimed maladies the method used is identical except for the condition to be treated. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method taught by Kehoe on patients having the maladies as claimed as an

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ordinary medical decision. The method would be predictable, treating a different patient with the known method and the method would have a high expectancy of success because the patient would be treated by the method. The claims do not require any degree of success in the actual treatment method, regarding the cure of the malady.

Claims 4, 24, 25, 26, 28-31, 33-43, and 46-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kehoe (5,794,203) in view of SpeechEasy (Speaking out, March 2002, supplied by the applicant).

Claims 4, 24, and 46-48 - Kehoe teaches a method as claimed but does not specifically set forth the specific housings as claimed. SpeechEasy sets forth the use of behind the ear, in the canal and completely in canal devices for treating stuttering. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to use any of the structural configurations set forth in SpeechEasy for the physical incorporation of the device of Kehoe to provide the desired level of concealment as set forth SpeechEasy. The use of the housings set forth in SpeechEasy for the housing of Kehoe would have produced an expected result with a high expectancy of success because the housings are used for similar devices.

Claim 25 - speech disorders include dysarthria may be caused by Parkinsons disease.

Claim 29 - speech disorders include dysarthria.

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Claim 31 - speech disorders include speech sound disorders include disorders characterized by difficulty learning to physically produce sounds.

Claim 35 - speech disorders include dysarthria may be caused by trauma.

Claims 26, 28, 30, 33, 34 and 36 - while Kehoe does not teach treating the claimed maladies the method used is identical except for the condition to be treated. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method taught by Kehoe on patients having the maladies as claimed as an ordinary medical decision. The method would be predictable, treating a different patient with the known method and the method would have a high expectancy of success because the patient would be treated by the method. The claims do not require any degree of success in the actual treatment method, regarding the cure of the malady.

Claim 37 - speech disorders include dysarthria may be caused by trauma.

Claim 38 - programming frequency shift is set forth in column 12 lines 11-38.

Claims 39-43 - the method used by Kehoe does not specify the age of the subject. It is the examiner's position that the method may be used with any aged subject. It would have been obvious to use the method taught by Kehoe with any aged subject because persons of any age may be diagnosed with the maladies treated by Kehoe.

Claim 48-52, 54 and 55 - Kehoe teaches a method as claimed but does not specifically set forth the specific housings as claimed. SpeechEasy sets forth the use of behind the ear, in the canal and completely in canal devices for treating stuttering. It would have been obvious to one of ordinary skill in the medical arts at the time the



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invention was made to use any of the structural configurations set forth in SpeechEasy for the physical incorporation of the device of Kehoe to provide the desired level of concealment as set forth in SpeechEasy. The use of the housings set forth in SpeechEasy for the housing of Kehoe would have produced an expected result with a high expectancy of success because the housings are used for similar devices. See element U13 and column 9 lines 20-30. The Examiner considers a CIC device to be an ITE device.

Claim 53 - the device of Kehoe teaches a manually programmed shift provided for by dipswitches. To replace manual dipswitches with a programmable processor to set the frequency shifts would have been an obvious design expedient to one of ordinary skill in the art to make something manual automatic.

Claims 56 and 57 - speech disorders include dysarthria may be caused by Parkinsons disease.

Claims 58, 59 and 62 - the intended use of the device does not provide a structural difference between the claimed structure and the structure taught by the cited art.

Claim 60 - speech disorders include dysarthria.

Claim 61 - speech disorders include speech sound disorders include disorders characterized by difficulty learning to physically produce sounds.

Claims 63-67 - the devices set forth by SpeechEasy are custom fit as set forth on page 7, therefore the device may be sized for use in any age group.

Claims 6, 27 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kehoe (5,794,203) and SpeechEasy further in view of Oster (6,644,973)

Claims 6 and 32 - the combination teaches a method as claimed but does not set forth treating a reading disability or impairment. Oster sets forth frequency modification feedback for the treatment of reading speed and comprehension, considered a reading disability by the examiner. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to use the device of the combination to treat a patient with a reading disability as set forth by Oster to treat patients with such disabilities.

### ***Double Patenting***

Applicant is advised that should claim 7 be found allowable, claim 15 will be objected to under 37 CFR 1.75 as being a duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 6,231,500, 4,895,519 and 5,995,932 teach related treatment devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Samuel G. Gilbert/  
Primary Examiner, Art Unit 3735